

MICHAEL J. AGUIRRE, City Attorney
 DANIEL M. BAMBERG, Deputy City Attorney (SBN 60499)
 WALTER C. CHUNG, Deputy City Attorney (SBN 163097)
 Office of the City Attorney
 1200 Third Avenue, Suite 1100
 San Diego, California 92101-4100
 Telephone: (619) 236-6220
 Facsimile: (619) 236-6018

To the benefit of the City of San
 Diego, Exempt from fees per
 Gov't Code § 6103.

Attorneys for Defendant
 Brian Cornell

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

RAYMOND ROBINSON,

Plaintiff,

v.

DAVID RUBIN and BRIAN CORNELL,

Defendants.

Case No. 08 CV 0244 W BLM

**DEFENDANT BRIAN CORNELL'S
 REPLY TO PLAINTIFF'S
 OPPOSITION TO MOTION TO
 DISMISS PLAINTIFF'S FIRST
 AMENDED COMPLAINT**

[Fed. R. Civ. P. Rule 12(b)(6)]

**[NO ORAL ARGUMENT PURSUANT
 TO LOCAL RULE 7.1]**

Date: June 6, 2008

Time: 1:30 p.m.

Courtroom: 10

Judge: Hon. Dana M. Sabraw

I.

LEGAL ARGUMENT

Plaintiff's complaint centers around his apparent dissatisfaction with the legal system which found him guilty of a traffic infraction. Two days after the conviction was overturned, Plaintiff filed this instant civil rights complaint alleging that the traffic infraction trial was handled in such a way that it deprived him of his due process rights under the Fourteenth Amendment.

Contrary to Plaintiff's allegations, nothing nefarious occurred at the traffic infraction trial. Indeed, the Engrossed Settled Statement on Appeal, attached as Exhibit "A" to Defendant Judge Rubin's Request for Judicial Notice, filed in connection with his Motion to Dismiss Plaintiff's

1 First Amended Complaint confirms this fact. From this settled statement of appeal, the record
2 clearly shows a judge who sought to understand the facts of the matter and applied the law to the
3 facts as presented by both Plaintiff and Defendant Officer Cornell. Yet, now Plaintiff complains
4 of the conduct of Defendant Officer Cornell and Defendant Judge Rubin in those proceedings
5 with such conduct giving rise to a civil rights complaint.

6 The traffic infraction trial only had three participants, Defendant Judge Rubin, Defendant
7 Officer Cornell and Plaintiff. Because those proceedings only involved verbal communications,
8 the only issue before this Court is whether or not the statements of these two defendants give rise
9 to a civil rights violation. Plaintiff, in his First Amended Complaint ("FAC"), concedes that
10 Defendant Officer Cornell was a *witness* at the trial. (See FAC ¶ 11, "Defendant Cornell was the
11 sole government witness....") Yet, Plaintiff has alleged that Defendant Officer Cornell's
12 testimony was really legal argument (vs. testimony) on behalf of the People of the State of
13 California. (FAC ¶¶ 13-14). However, Plaintiff's subjective characterization is not determinative
14 in light of the fact that the Engrossed Settled Statement shows otherwise.

15 Contrary to his own argument, Plaintiff now argues that his FAC has nothing to do with
16 the testimony given by Defendant Officer Cornell at the traffic infraction trial. Plaintiff makes
17 this argument despite the fact that the crux of Plaintiff's complaint is that "Plaintiff's due
18 *procedural* due process rights where having a layperson argue the law on behalf of the State and
19 having the judge rely upon said argument for the court's guilty verdict, thus rendering the
20 underlying proceedings fundamentally unfair." [emphasis in original] (FAC ¶ 18). Incredulously,
21 now Plaintiff argues that "Defendant Cornell's testimony receives no mention whatsoever in
22 Plaintiff's First Amended Complaint" (Opposition 4:14-15). Plaintiff also now argues that "[a]s
23 anyone can see from reading the First Amended Complaint, there is no issue whatsoever
24 regarding anyone's *testimony*. Such an issue arises solely from this Defendant's conniving
25 imagination." [emphasis in original] (Opposition 4:7-9).

26 Based solely on these arguments of the Plaintiff himself, the Court, as this defendant now
27 does, has to be asking itself, then what is the crux of your complaint if it is not the testimony of
28 Defendant Officer Cornell? Plaintiff offers no answer to that question. Nor does Plaintiff offer

1 any *legal arguments* to counter Defendant Officer Cornell's arguments in favor of dismissal.
2 Rather, Plaintiff, in what can only be characterized as a rant, claims that Defendant Officer
3 Cornell his "misled" this Court and "misinterpreted" the law. Neither of those allegations are
4 true.

5 **II.**

6 **CONCLUSION**

7 In this instant case, Plaintiff's FAC, despite the allegations of conspiracy and "shocking
8 the conscience of a reasonable person," reveals that the incident in question was nothing more
9 then a traffic infraction hearing where Judge Rubin sought to understand the true facts of the
10 situation from both the plaintiff and Defendant Officer Cornell so that he, as trier of fact, could
11 render a fair and impartial ruling on the matter. That being the case, there was no denial of
12 Plaintiff's due process rights. Accordingly, Plaintiff's Section 1983 claim from relief should be
13 dismissed without leave to amend.

14 Dated: May 27, 2008

MICHAEL J. AGUIRRE, City Attorney

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16 By /s/ Walter C. Chung
DANIEL M. BAMBERG
WALTER C. CHUNG
17 Deputy City Attorneys
18 Attorneys for Defendant Brian Cornell
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